IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on: 22.10.2024

Delivered on: 05.06.2025

CORAM
THE HONOURABLE MRS. JUSTICE J. NISHA BANU
&
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

CMSA.Nos. 23, 24, 25 of 2024

and CMSA. 30 & 31 of 2023

1. Army Welfare Housing Organisation(AWHO)
represented by its Managing Director
South Hutments, Kashmir House
Rajaji Marg
New Delhi-110 011 ...1st Appellant in CMSAs 23 to 25 of 2024
...Sole Appellant in CMSA.30 & 31 of 2023

2. The Project Director
Army Welfare Housing Organisation (AWHO)
Dinesh Vihar, Thazhambur Link Road
Chennai-600 103 ...2nd Appellant in C.M.S.A. Nos.23,24 & 25 of 2024

-Vs-

1. Capt.Nagarajan Vasudeva Rao
D-093, D Tower, AWHO Complex
DLF Thalambur Road, Thalambur P.O.Chennai-600 130.
... Respondent in both CMSA.Nos.23 of 2024 & 31 of 2023

2. Commander N.Koteeswar (Retd.)

...Respondent in CMSA. No.24/2024

3. Col.C.M.Unnithan (Retd) ... Respondent in both CMSA. Nos.25 of 2024 & 30 of 2023

Prayer in CMSA.Nos. 30 & 31 of 2023:

Civil Miscellaneous Second Appeal filed under Section 58 of the Real Estate (Regulation and Development) Act read with Section 100 of the Civil Procedure Code, against the order dated 21.04.2023 made in Appeal Nos.12 & 13 of 2023 on the file of the Tamil Nadu Real Estate Appellate Tribunal (TNREAT), Chennai confirming the order dated 21.11.2022 made in Complaint Nos.193 & 300 of 2021 on the file of the Tamil Nadu Real Estate Regulatory Authority (TNRERA), Chennai.

Prayer in CMSA.Nos. 23, 24 & 25 of 2023:

Civil Miscellaneous Second Appeal filed under Section 58 of the Real Estate (Regulation and Development) Act read with Section 100 of the Civil Procedure Code against the order dated 20.12.2023 made in Appeal Nos. 51 to 53 of 2023 on the file of the Tamil Nadu Real Estate Appellate Tribunal (TNREAT), Chennai confirming the order dated 21.12.2022 made in Complaint Nos. 291, 293 & 294 of 2019 on the file of the Tamil Nadu Real Estate Regulatory Authority (TNRERA), Chennai.

In both C.M.S.A's.

For Appellants: Mr.A.R.L.Sundaresan, Senior Counsel
for Mr.V.G. Suresh Kumar

For Respondents : Mr.Ramasubramaniam Raja

JUDGMENT

J.Nisha Banu,J

The above appeals in C.M.S.A.Nos.23 to 25 of 2024 and 30 & 31 of 2023 have been filed by the Army Welfare Housing Organisation (AWHO) under Section 58 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "the Act"), read with Section 100 of the Civil Procedure Code, challenging the impugned orders dated 20.12.2023 and 21.04.2023 passed in Appeal Nos. 12, 13 & 51 to 53 of 2023, on the file of the Tamil Nadu Real Estate

Appellate Tribunal, Chennai (hereinafter referred to as "the Tribunal"). These orders confirmed the common orders dated 21.11.2022 and 21.12.2022 passed in Complaint Nos. 291, 293 & 294 of 2019 and 193 & 300 of 2021, respectively, by the Tamil Nadu Real Estate Regulatory Authority, Chennai (for brevity, "the Authority").

2. Before embarking on the main issue, the facts of the case is set out as under:-

(a) The appellants herein are the promoters/developers of the residential project "Dinesh Vihar", situated at Thazhambur village, Chengalpaet District, while the Respondents herein are the purchasers/ Complainants.

(b) The undisputed facts are that the appellants are engaged in the business of construction of dwelling units for serving/retired Army personnel on a "No Profit, No loss" basis. The respondents in the respective appeals evinced interest in purchasing a plot which was promoted and sold by the appellants herein. Accordingly, the respondents submitted an application and in response, the appellants alloted the respective apartments to them.

(c) In so far as C.M.S.A.Nos. 23 to 25 of 2024 are concerned, the respective respondents filed complaints concerning the issue of "Registration" of this Real Estate Project. After hearing the matter in detail and examining the available records, the Hon'ble Adjudicating Authority disposed of the complaints in C.Nos.291, 293 &294 of 2019 by order dated 21.12.2022.

(d) The Authority held that the project was an ongoing project as on 01.05.2017 and not a real estate project completed in all respects as of 01.05.2017 based on the examination of the MLPA [Mammalapuram Local Planning Authority] and the officials concerned. Consequently, directed the promoter/appellant herein to file an application for registering this real estate project with this Authority before 31.03.2023. The said order was confirmed by the Hon'ble Appellate Authority by the Impugned Order dated 20.12.2023, passed in Appeal Nos. 51 to 53 of 2023. Challenging the same, the present Civil Miscellaneous Second Appeal have been preferred.

3. Insofar as appeals in CMSA.Nos. 23 to 25 of 2024 are concerned, the issue to be decided is as under:-

i) Whether the direction for Registration under Section 3 of the Tamil Nadu Real Estate (Regukation and Development) Act, 2017, issued by the Hon'ble Appellate Tribunal (TNREAT) as well as the Hon'ble Adjudicating Authority (TNRERA)is valid and legally sustainable?

4). While taking the appeals in C.M.S.A.No. 30 & 31 of 2023, it is seen that the respective respondents filed complaints claiming 'Compensation and other reliefs' from the appellant herein on various grounds including the delay in construction and delivery of the Apartments.

5. After hearing the matter in detail and examining the available records, the Adjudicating Authority, by order dated 21.11.2022, in Complaint Nos.193 & 300 of 2021, directed the appellants to pay the respondents, the amount of Compensation and cost as per the findings made in its order.

6. The said order was confirmed by the Appellate Authority [TNREAT] by the Impugned Order dated 21.04.2023, passed in Appeal Nos. 12 & 13 of 2023.

7. The appeals in C.M.S.A.Nos. 30 & 31 of 2023 have been admitted vide order dated 19.06.2023 by raising the following substantial questions of law :

A) Whether the Appellant being a "No Profit No Loss" Society as per its aims and objectives, can be held liable to pay Penalty or Compensation to the Allottee for the delay under the Act.

B) Whether Section 2(zk), Section 11, Section 18(1)(a) and (1)(b) and Section 31 of the Act are unconstitutional being arbitrary and violative of principals of equality as the said provisions treat two unequals as equals.

C) Whether prescribing uniform rate of interest vide Rule 18 to be paid to the home buyer without using discretion for granting interest as provided vide Section 72 of the Act violates the spirit of the Act as well as equal protection of law in terms of Article 14.

D) Whether the orders of the Hon'ble Adjudicating Officer and the Hon'ble Appellate Tribunal directing payment of interest / compensation under Section 18 of the Act, inthout considering the provision as contained in Section 72 of the Act and the conditions stipulated therein is just and proper.

E) Whether the orders of the Hon'ble Adjudicating Officer and the Hon'ble Appellate Tribunal, which proceeds on the basis that in the event of delay in delivery of possession of the unit, within the stipulated date for completion, the *allottee will automatically be entitled to interest / compensation under Section 18 of the Act, just and proper in the light of Section 72 of the Act.*

F) Whether the orders of the Hon'ble Adjudicating Officer and the Hon'ble Appellate Tribunal directing payment of interest / compensation, without considering or discussing whether the respondent had pleaded, proved and established the entitlement thereto is just and proper.

G) Whether the orders of the Hon'ble Adjudicating Officer and the Hon'ble Appellate Tribunal holding that the respondent is entitled to interest from the date of allotment just and proper.

8. The arguments advanced in C.M.S.A.No. 23 to 25 of 2024 are as follows:-

(i) The learned Senior counsel for the Appellants submitted that as per Section 3(2)(b) of the TNRERA Act, registration is not necessary if the promoter has received the completion certificate prior to the Act's commencement. Since the subject land is outside the Chennai Metropolitan area, there is no procedure contemplated for issuance of completion certificate and therefore as per Rule 2(h)(ii), if the project is completed, it is exempted from registration.

(ii) The learned Senior counsel for the appellant further submitted that an application with condone delay has been filed seeking for exemption of registration as per rule 2(h)(ii), thereby the authority condoned the delay and granted exemption under rule 2(h)(ii) of the TNRERA Rules.

(iii) The learned Senior counsel also submitted that the purpose of Registration of the said project under this Act is to ensure developer completes and utilizes the funds properly. Here the appellant is "No Profit No Loss" organisation and has already completed the project and had delivered the Dwelling Units to almost 90% of the project allottees. Therefore, prayed before this court to allow the present appeals as the direction to register the project would be a futile exercise.

9. Per Contra, the learned counsel for the Respondents-buyers submitted that when the Act came into force, the part of the approved project was still incomplete and therefore as per Section 3 of the TNRERA Act, projects which are on going on the date of commencement of Act and where the completion certificate was not issued, then the promoter shall register the same.

10. The learned counsel for the respondents further submitted that the appellant failed to comply with the criteria to be fulfilled for exemption under Rule 2(h)(ii) of the TNRERA Rules and thereafter filed an application with the delay of 15 days. On inspection, it was found that the project is only partly completed and therefore the project comes under the definition of "Ongoing Project" and thereby authority vide letter dated 13.12.2017 issued direction for registration.

11. It is also submitted by the respondents counsel that already the respective Respondent in CMSA.No.25 of 2024 has challenged the said Rule 2(h)(ii) of the TNRERA Rules, 2017 in W.P.No.19480 of 2020 (***Subashini Thulasiram Vs. SPR & RG Constructions Pvt. Ltd) reported in 2020 SCC OnLine Mad 2020***, wherein, it was held that the parent act would prevail over the Rule and the said Rule cannot contradict the act. Therefore the stand taken by the appellants that the project exempted under rule 2(h)(ii) is unsustainable and therefore the letter dated 28.08.2018 issued by the authority is ultravires. In support of his submissions, the learned counsel for the respondents relied on the following dictums,

I. Newtech Promoters and Developers Pvt. Ltd Vs. State of U.P. and Others (2021 SCC Online SC 1044)

II. M/s. Devinarayan Housing and Property developments Private LImited rep by its MD and others Vs. Manu Karnan and Ors, dated 20.09.2023.

12. The learned counsel for the respondents also asserted that the appellant cannot take advantage of Non Registration since 2017 till 2024 and cannot contend that it does not serve any purpose. Since there is restriction on registration of sale deed for the reason that the said project is developed in 'Anadheenam Land'. The said issue is pending before the Hon'ble Supreme Court, where the Appellant had filed only Intervention application in SLP.No.24430-31 of 2019. It is also stated that the Appellant had encroached into common areas and violated the approved plan and made the huge profit in addition to the final cost. Majority of the allottees also support for registration of the project. Thereby concluded the submissions by praying for dismissal of the present appeals on the aforesaid grounds.

13. In C.M.S.A.No. 30 & 31 of 2023, the learned Senior counsel for the

Appellants with respect to the substantial questions of law raised in C.M.S.A. Nos. 30 & 31 of 2023 submits that the RERA Act's primary purpose is to protect the consumers in the real estate sector from intentional or negligent misconduct by promoters, especially where such misconduct results in disproportionate profits. It is submitted that the statutory considerations for granting compensation as per Section 72(a) to (d) includes disproportionate gain, actual loss, repeated defaults, and any other factors relevant to justice.

14. It is argued that since they operate on a "No Profit, No Loss" basis and are redistributing any surplus or deficit among the allottee's, they should not be treated like commercial builders. Awarding compensation in this case would unfairly burden co-allottees and violate Article 14 of the Constitution, which guarantees equality. The precedents supporting their contentions are:-

I). Bangalore Development Authority Vs Syndicate Bank (2007) 6 SCC 711.

II). R.Venkatraman Vs. Managing Director, Indian Railway Welfare

Organisation (CCP.No.341 of 2019)

III). Manoj Kumar Vs. AWHO (C.No.4215 of 2020)

IV). Col.Ratneshwar Prasad Singh Vs. AWHO dated 16.06.2022 in Case No.RERA/GCNo.0367/2021TR

V). Maj Sandeep Vinayak & Others Vs AWHO dated 06.06.2022 in C.No.221 of 2017

VI). Lt Col Abhilash Chandran Vs AWHO(Appeal No.41 of 2023)

15. Further, the learned Senior counsel for the appellants submits that Section 18(1)(a) of the Act and its proviso imposes a uniform interest liability on all the promoters. This creates a financial burden on non-commercial promoters like the appellant, affecting the project's shared account, leading to inequality among the consumers. Since the appellant charges only a fixed 3% administrative fee and does not earn profit, the imposition of equal liability across different promoter types violates the principle of equality. This approach results in inequality, especially when the real estate consumer continues with the project

and benefits from the appreciation in property value, while still claiming interest from the promoter, effectively leading to unjust enrichment.

16. In support of his contention, the learned Senior counsel for the appellants cites the Supreme Court's decision in ***Ghaziabad Development Authority v. Balbir Singh (2004) 5 SCC 65*** which emphasized that compensation should vary depending on the nature and extent of the loss suffered. The Court held that parties who have refunded their money without receiving possession should be awarded higher compensation due to the loss of expected appreciation. Conversely, if possession is delivered, the value appreciation compensates part of the delay, and thus, lesser compensation may be warranted. Therefore, compensation must be assessed on a case-by-case basis and not applied uniformly.

17. In the present case, the appellant argues that the respondents have not proved that they suffered actual financial loss such as incurring additional interest on home loans or losing rental value due to the delay in possession. Despite this,

the RERA Authority awarded interest at MCLR + 2% from the date of payment, without assessing the existence or extent of actual loss. This is arbitrary and unjust and asserted that such awards should not be automatic and must be supported by clear evidence that they suffered loss.

18. The learned Senior counsel for the appellants furthermore stated that by applying identical interest liability to both commercial and non-commercial promoters, the Act effectively penalizes organizations like the appellant that are not structured for profit. As such, the provisions under Sections 2(zk), 18(1)(a), its proviso and Rule 18 are unconstitutional in their current form, and the interest awarded in this case should be set aside.

19. Therefore the learned Senior counsel for the appellants submits that the Hon'ble Adjudicating Authority and the Hon'ble Appellate Authority considered the complaint under Section 71 of the RERA Act without applying or analyzing the provisions of Section 72. The authorities have presumed that the grant of interest in the event of delay is automatic, without conducting the necessary inquiry mandated under Section 72, which requires an assessment of factors such as disproportionate gain by the promoter or actual loss to the allottee.

20. The learned senior counsel further stated that they had sold the unit at Rs. 3,100 per sq. ft., which was significantly below the market rate of Rs. 4,500 per sq. ft. even at the time of allotment, and the market value has further appreciated since then. Despite this appreciation, the authorities ignored these facts and also disregarded the respondents' past conduct where they had agreed for revised schedules and deferred payment dates. The expected date of completion under the revised contract terms was June 2017. Hence, the delay must be seen in light of the revised contract, not the original contract.

21. The learned Senior counsel also referred to a prior decision by the same Authority in Appeal No. 41 of 2023 regarding their Coimbatore project, where the Hon'ble Tribunal held that if there was no clear contractual deadline for delivery and only a probable date was mentioned, the allottee could not claim compensation. The appellant asserts that similar facts apply to the present case. Further, the Supreme Court judgment in ***Ghaziabad Development Authority vs Balbir Singh reported in 2004 5 SCC 65*** clarified that interest liability arises only if there is demonstrable default or negligence that causes actual harm to the

allottee. The judgment also emphasized that compensation cannot be awarded uniformly in all cases but must depend on the specific facts, loss, and extent of harassment. This precedent was also upheld by the National Consumer Disputes Redressal Commission in Revision Petition No. 2002 of 2005.

22. The learned Senior counsel for the appellants concludes that since the respondents failed to prove any actual loss, the order granting interest at a uniform rate is legally unsustainable. Additionally, such an award would result in an unfair outcome, as the appellant would be compelled to recover or deduct the compensation from the remaining allottees, leading to inequity within the project.

23. Section 18(1)(a) of the RERA Act says that if a homebuyer decides not to withdraw from the project, the promoter must pay interest for every month of delay in giving possession. This delay should be counted from the promised date of possession. But in this case, the Adjudicating Officer wrongly calculated interest from the date of the buyer’s first payment instead of from the promised possession date. Also, the interest was ordered to be paid until the actual handover of possession, not until the offer of possession, which is when the buyer was

supposed to complete certain formalities like paying the final installment. Importantly, the date considered as the promised date of possession was not correct, it was based on an earlier estimate, not the revised date that both sides had agreed to later. Because of this, the order to pay interest at MCLR + 2% from the first payment date until final handover goes against the facts and the rules in the RERA Act, and should be cancelled.

24. On the contrary, the learned counsel for the respective respondents would submit that the appellant/promoter is liable to compensate the allottee under Section 18 of the RERA Act, for failing to meet the agreed project completion deadline of December 2015. Due to the delay, the respondent had incurred losses by paying rent totaling Rs. 14,51,000/- until the handover on 5th December 2019. The promoter has relied on the events such as the 2015 Chennai floods, Cyclone Vardha, demonetization, and other factors to justify the delay. However, these events were not in any way responsible for the delay that would excuse the promoter's breach of obligation. Despite being informed of the delays, the respondent did not waive their rights and is therefore entitled to compensation. The promoter also failed to complete the promised amenities, execute a proper

construction agreement, or register the Undivided Share of Land (UDSL) except issuing a one sided booking letter dated 13.02.2013.

25. It is further submitted that Appellant cannot rely on its own bye-laws and brochure to deny compensation as Respondents are not members of the Appellant Association. Such brochure does not have statutory strength to override provision of RERA Act. Since the appellant's Master Brochure, last amended on 01.03.2016, is arbitrary and one-sided and since the respondent is not its signatory, the said document is not binding on them.

26. With respect to the Appellant's contention that it is a "No profit No loss" organization, it is submitted that the same argument was already raised before the Hon'ble Appellate Tribunal in Appeal No.1 of 2019 and was rejected. The Tribunal held that there is no provision contemplated under RERA Act that exempts the appellant from registration on the ground of being a Non profit organization. Therefore, appellant cannot wriggle out from the liability by reiterating this submission.

27. It is the further submitted that appellant has made huge profits not only from the respondent but also from 851 other allotees. Regarding the appellant's contention that the undertaking given on 13.12.2019, after the order passed in C.No.294 of 2017, amounts to waiver, it is submitted that the respondents' right to claim compensation was not waived, as the respondents immediately preferred an appeal against the order dated 24.06.2019.

28. The learned counsel for the respondents further submitted that the case laws relied upon by the appellant are not relevant.

i) ***Bangalore Development Authority vs Syndicate Bank- (2007) 6 SCC 711-*** In this case, the Hon'ble Supreme Court laid down principle for delay in delivery of possession, when some special statue steps in and creates any statutory obligation on the party of a development authority in the contractual field, then the matter will be governed by the provision of the statue. But the present case, there is no special statute and the appellant's bye-laws cannot be equated to the statue. Therefore, this judgement is inapplicable, and the applicable law is the RERA Act, which safeguards the interest of Homebuyers.

ii)***Ghaziabad Development Authority vs Balbir Singh- (2004) 5 SCC 65*** - The appellant's reliance on this case, where it was held that courts granting uniform interest rates is violative of Article 14, is unsustainable. The constitutionality of RERA and Section 18 of RERA has been upheld in **Neelkamal Realtors Suburban Pvt Ltd and another Vs Union of India and another** *reported in* **AIR 2018 (NOC) 398 (BOM)**. Moreover, RERA being a special statute, prescribes a specific rate of interest. In contrast, the Ghaziabad judgment dealt with the Consumer Protection Act, which does not provide fixed rate of interest. It is submitted that every statute, including RERA, carries a presumption of constitutionality, and therefore, granting a particular rate of interest is not arbitrary.

29. The learned counsel for the respondents stated that with respect to the appellant's claim that the Adjudicating Officer under TNRERA failed to consider the relevant factors under Section 72 while determining compensation is without merit. Section 72 is not limited to assessing only disproportionate gain or loss; it also permits consideration of other factors to ensure justice. The provision is illustrative, not exhaustive. The compensation awarded, including interest for

delay, is justified as the appellant benefited from the allottee's funds during the project's delay. Losses incurred by the allottee such as rent, interest, and loan repayments are valid grounds for compensation. Courts have recognized interest as a form of compensation, and thus, the adjudicating order passed by TNRERA and TNREAT is legally sound and contains no irregularity.

30. In support of his contentions, the learned counsel for the respondents relied on the following decisions.

I) Brig K G Kuthiala vs Army Welfare Housing Organisation reported in MANU/CF/0229/1996.

II) Lucknow Development Authority vs Hari Prakash Saxena reported in 2023 SCC OnLine UP RERA 103.

III) Sare Shelters Project Pvt Ltd. Vs Sare squires and ors reported in MANU/TN/1013/2021.

IV) Air Force Naval Housing Board Air Force Station vs UP Real Estate Regulatory Authority reported in 2022 SCC OnLine ALL 212.

31. Heard the learned counsel for the appellants as well the learned counsel for the respondents.

32. CONCLUSION:

C.M.S.A.Nos. 23 to 25 of 2024:

(i) It is pertinent to note that Section 3 of the RERA Act mandates registration of real estate projects, including ongoing ones without a completion certificate at the Act's Commencement. As held in ***Devinarayan Housing and Property Developments Pvt. Ltd. Vs Manu Karan***, dated 20.09.2023 in C.M.S.A.No.23 & 24 of 2020, Section 3(2)(a) of the RERA Act applies only when both specified conditions are met. For the sake of convenience, Section 3 of the RERA Act is extracted herein:

"Section 3- Prior registration of Real Estate project with Real Estate Regulatory Authority.

(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority

established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under *this Act;*

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately."

(ii) With respect to the contention that since the subject land is outside the Chennai Metropolitan Area and there is no procedure contemplated for issuance of Completion Certificate, registration is not necessary and in view of the above, the appellant herein got exemption under Rule 2(h)(ii) of the TNRERA Rules vide order dated 21.05.2019, stating that the project is structurally completed.

(iii) It is seen from the records that subsequently the Madras High court vide its order dated 21.01.2021 remanded the matter to TNRERA with a direction to consider the matter afresh, after issuing notice to the appellant and respondent herein and summoning all records from the planning authority and if necessary, to examine witnesses and record statements. The TNRERA after examining 4 witnesses and after summoning the records passed its order dated 21.12.2022. On perusal of the same it is evident that the inspection reports of the certified architect or structural engineer reveals that the "project is structurally completed but not completed in all aspects". Therefore, the projects that are structurally completed but lack full completion are considered "Ongoing Projects" under RERA and are subjected to mandatory registration under Section 3 of the Act.

33. In light of the above, the project requires Registration since the RERA Act provides various reliefs to the allottees and the same cannot be taken away by Non-Registration. Therefore the orders passed by the Hon'ble Adjudicating authority and the Appellate Authority directing the project for registration vide orders dated 21.12.2022 and 20.12.2023 hereby stands confirmed .

34. <u>C.M.S.A.Nos. 30 & 31 of 2023:</u>

(i) Answering Substantial Questions (A) & (B):

It is seen from the records that the appellant organisation works on the principle of "No Profit - No Loss" basis. The appellant organization engaged in promoting and construction of Dwelling Units for the retired or serving Army personnels. The plea raised by the appellant organisation is that they being No Profit- No Loss organisation should not be held liable to pay interest or compensation for the reason that they do not earn any profit. It is pertinent to note that, as per Section 2(zk) of RERA Act, 2016, the appellant organisation would fall within the ambit of definition of 'Promoter' and the same has been decided in ***Air Force Naval Housing Board (AFNHB), Air Force Station v U.P.Real Estate Regulatory Authority and Another*** and therefore the project undertaken would fall within the definition of 'Real Estate Project'.

(ii) Therefore, not charging any profit from the retired/ serving army personnels would not exclude the appellant organisation from the definition of 'Promoter' under the Act and no such exception has been carved out by the legislature. In view of the above, since the respective respondents had not withdrawn from the project and had opted to continue with the project which was admittedly delayed for the reasons stated therein, therefore, as per proviso to Section 18(1) of the RERA Act, the promoter is liable to pay interest for the delay till handing over the possession of the unit.

(iii) It is the mandatory duty of the promoter to pay interest till the date of handing over possession of their unit for the delay at the prescribed rate. Therefore, this court is of the view that the respective respondent/allottee is entitled to be paid interest for the delay caused by the appellant-promoter, irrespective of the nature/ composition of the organisation. And that the uniform regulation is not arbitrary, but rather essential to achieve the object of the Act.

(iv) **Answering For Questions (C),(D), (E), (F) &(G):**

To answer these questions, firstly to look into the provision of Proviso to Section 18 and Section 72 of the RERA Act.

"***Section 18 -Return of amount and compensation.***

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf *including compensation in the manner as provided under this Act:*

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

Section 72:Factors to be taken into account by the adjudicating officer.

While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused as a result of the default;

(c) the repetitive nature of the default;

(d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice."

It is therefore clear from the reading of proviso of Section 18 of the TNRERA Act that when an allottee does not intend to withdraw from the project and thereby continues with the project, he "shall" be paid by the promoter, the 'interest' for every month delay , till the handing over of the possession, at such rate as may be prescribed. Whereas as per section 72, it lays down the factors that the adjudicating officer must consider when 'awarding compensation'.

(v) It is pertinent to point out that the Hon'ble TNRERA after considering the records and submissions rightly held that

"(a) Both the complainants have claimed compensation under different heads and other reliefs. The complainants have claimed compensation on the ground of interest towards delayed handing over and also compensation towards rental expenses. ***So far as Compensation for the delay in handing over is concerned, Section 18 of the RERA Act provides that the promoter is liable to pay the allottee, interest on the amount paid for every month of delay till the handing over possession of the apartment. Therefore, the Complainants are not entitled for compensation for rental expenses****. The complainants have also claimed compensation on the ground of defective title of the land. In the counter, the respondent specifically stated that the survey numbers of the land in the project is not in the list of "anadeenam" land declared by Land Administration Department of the state government. The complainants have not filed any documents, except Ex.Nos.A13 and A10, the newspaper cutting without survey numbers of land, to prove that the title of the project land is defective.* ***Therefore,***

the complainants are not entitled for compensation on the ground of defective title of the land of the project.

(b) The complainants also claimed compensation for the incomplete approved amenities. It is not the case of the complainants that they filed any complaints for direction before the Authority for completion of the approved amenities by the respondent. It is open to the complainants to seek appropriate reliefs before the Authority for completion of the approved amenities. ***Therefore, the complainants are not entitled for compensation at this juncture on the ground of incomplete approved amenities.***

(c) In the above circumstances, the complainants are entitled for compensation for the delay as provided under section 18 of the RERA Act. As per rule 18 of TNRERA Rules, the rate of interest shall be at the highest marginal cost of lending rate of SBI plus 2%. Hence, the complainants are entitled for the interest at the rate of 7.30% per annum which was currently the highest marginal cost of lending rate of interest of SBI, at the time of filing of the complaint, plus 2% per annum i.e., 9.30% per annum for the amounts paid from the dates of payment till the delivery of the constructed apartments.

(d) Apart from the above compensation for the delay in handing over the dwelling units, each complainant is entitled for a sum of Rs. 1,00,000/- each towards mental agony and deficiency in service by the respondent and a sum of Rs.25,000/- towards litigation expenses.

In the result, the respondent is directed as follows:

The respondent shall pay the complainants the amounts of compensation and cost as per the findings in Answer for Point No.(iii), Para 9 of this order within 30 days from the date of issue of this order."

35. Therefore, on careful perusal of the provisions of Section 18 and Section 72 of the RERA Act and the order passed by the Adjudicating Authority and the Appellate Authority, this Court is of the considered view that the Authority had rightly granted interest under Rule 18 of the TNRERA Rules as per Section 18 of the RERA Act. Since Section 72 is with regard to the determination of quantum of compensation and not the interest, the appellate Authority's Order confirming the Order of the Adjudicating Officer granting interest alone for the delay in handing over possession based on the current highest lending rate of interest of State Bank of India (SBI) plus 2% per annum as per rule 18 of the TNRERA Rules not as compensation amount, is just and proper and it needs no interfernce. Further, the direction to the appellants to pay the amount of Rs. 1,00,000/- to each buyer towards mental agony and deficiency in service and a sum of Rs.25,000/- towards litigation expenses, is also just and proper and this

Court does not find any interference on the same. The substantial questions of law are answered on the above terms.

36. In the result, the above Civil Miscellaneous Second Appeals are dismissed. The decision rendered by the Appellate Authority [Tamil Nadu Real Estate Appellate Tribunal] vide impugned orders dated 21.04.2023 and 20.12.2023 confirming the orders dated 21.11.2022 and 21.12.2022 passed by the Adjudicating Authority stand confirmed. No costs.

[J.N.B.,J.]   [R.K.M.,J.]
05.06.2025

nvsri

To

1. The Managing Director
   Army Welfare Housing Organisation(AWHO)
   South Hutments, Kashmir House
   Rajaji Marg, New Delhi-110 011

2. The Project Director
Army Welfare Housing Organisation (AWHO)
Dinesh Vihar, Thazhambur Link Road
Chennai-600 103

3.The Tamil Nadu Real Estate Appellate Tribunal (TNREAT), Chennai.

4. The Tamil Nadu Real Estate Regulatory Authority (TNRERA), Chennai.

J. NISHA BANU, J.
and
R.KALAIMATHI, J.

nvsri

Judgment in

C.M.S.A.Nos.23, 24, 25/2024 and 30 and 31 of 2023

05.06.2025